

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL L. BUESGENS,

No. C-08-5710 MMC

Plaintiff,

**ORDER LIFTING STAY OF
PROCEEDINGS; GRANTING
PLAINTIFF'S MOTION TO DISMISS
COMPLAINT WITHOUT PREJUDICE;
DENYING PLAINTIFF'S REQUEST FOR
REFUND OF FILING FEE; DIRECTIONS
TO PLAINTIFF; DIRECTIONS TO CLERK**

v.

BEVERLY HART, et al.,

Defendants

By order filed February 17, 2009, the United States Court of Appeals for the Ninth Circuit granted plaintiff's motion to voluntarily dismiss his appeal from this Court's December 30, 2008 order denying plaintiff's application to proceed in forma pauperis. Accordingly, the stay of proceedings imposed by the Court's January 23, 2009 order is hereby LIFTED. (See Order, filed January 23, 2009, at 3:16-17 (staying proceedings "pending final resolution of plaintiff's appeal").)¹

¹On February 9, 2009, plaintiff filed a document titled "Motion for Leave to File Appeal In Forma Pauperis Number 2," in which plaintiff stated he was "appealing this Court's order denying his motions for judicial notice of adjudicative facts." (See Mot., filed February 9, 2009, at 2.) To the extent the Ninth Circuit may determine said motion constitutes a notice of appeal from the Court's January 23, 2009 order denying plaintiff's motions for judicial notice, the Court finds, for the reasons stated in its February 19, 2009 order, that the order denying plaintiff's motions for judicial notice is clearly unappealable. Consequently, the Court will "disregard the purported notice of appeal" from the order denying plaintiff's motions for judicial notice, and will "proceed with the case, knowing that it has not been deprived of jurisdiction." See Ruby v. Secretary of the U.S. Navy, 365 F.2d 385, 389 (9th Cir. 1966).

1 Now before the Court is plaintiff's "Motion to Dismiss This Case Without Prejudice,"
2 filed February 19, 2009. Having read and considered said motion, the Court rules as
3 follows:

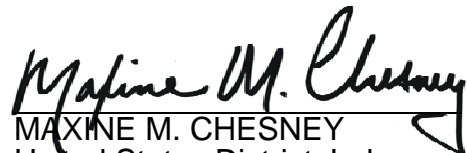
4 1. To the extent plaintiff seeks to voluntarily dismiss the instant complaint without
5 prejudice, the motion is hereby GRANTED, the above-titled action is hereby DISMISSED
6 WITHOUT PREJUDICE, and the Clerk is hereby DIRECTED to close the file. If plaintiff
7 seeks to refile the instant complaint or any other complaint in this District, plaintiff is hereby
8 ORDERED to submit to the Clerk of the Court, along with any proposed complaint, a copy
9 of the pre-filing order issued June 21, 2007, by the Honorable Sam Sparks, in Buesgens v.
10 Travis County, Texas, Case No. A-07-CA-427-SS (Western District of Texas).

11 2. To the extent plaintiff seeks a refund of the filing fee, the request is hereby
12 DENIED, no authority for such refund having been provided,.

13 3. In light of the dismissal of the instant action, plaintiff's "Motion for Leave to File,"
14 filed February 17, 2009, and plaintiff's "Motion for Clarification," filed February 23, 2009, are
15 hereby DENIED as moot.

16 **IT IS SO ORDERED.**

17
18 Dated: February 26, 2009


MAXINE M. CHESNEY
United States District Judge